



**Legislative Department
Seattle City Council
Memorandum**

Date: November 22, 2011

To: Councilmembers Tim Burgess, Sally Bagshaw, and Sally Clark
Public Safety and Education (PSE) Committee

From: Martha Lester, City Council Central Staff

Subject: Third Provider Indigent Public Defense Contract (C.B. 117344) – on agenda for December 7, 2011, PSE Committee Meeting

C.B. 117344 was introduced on November 21, 2011, and referred to the Public Safety and Education (PSE) Committee. It would authorize the City Budget Director to execute a contract with the proposed third public defender agency, The Defender Association (TDA). This item will be on the PSE Committee's agenda on December 7, 2011, for discussion and possible vote.

This memo provides background and summarizes the proposed legislation. If you have any questions, please let me know. Note that I will be on vacation November 28 through December 6. While I am gone, Linda Taylor-Manning and Catherine Cornwall in the City Budget Office (CBO) are available to answer questions. You can reach Linda at 4-8376; you can reach Catherine at 4-8725.

Background

Ordinance 122602 (as amended by Ordinance 123454 and Ordinance 123634) sets the framework for indigent public defense contracting in the City of Seattle. It provides in part: "The City shall enter into contracts for indigent public defense services with three providers: a primary provider; a secondary provider to handle conflict cases and other cases as may be assigned by the contract administrator; and a third provider to represent defendants in cases in which both the primary and secondary providers have a conflict of interest." It further provides that for cases in which all three providers have conflicts, "The City will enter into an agreement with one of the three providers to administer assigned counsel cases."

As specified in Ordinance 122602, no contract shall exceed three years in duration. The existing contracts (and the one proposed in C.B. 117344) extend through June 30, 2014.

The 2012 Adopted Budget includes \$6.2 million for indigent public defense services.

2011 Legislation and Other Actions Related to Public Defense Contracting

The following table summarizes key legislation and other actions during 2011 related to public defense contracting.

June 2011	Mayor submitted proposed legislation to authorize the primary defender contract with Associated Counsel for the Accused (ACA), and the secondary defender contract with Northwest Defenders Association (NDA).
June 17, 2011	The Defender Association (TDA) sued the City, claiming it (and not NDA) deserved the secondary defender contract.

June 27, 2011	The Council passed Ordinance 123634, authorizing the primary defender contract with ACA, and providing that on an interim basis, ACA would assign conflict cases to NDA and TDA on an alternating basis. The Council also directed CBO to follow the process outlined in Ordinance 122602 to select a third provider.
June and July 2011	The City prevailed on the TDA litigation in King County Superior Court and in the Court of Appeals. The Court of Appeals awarded the City attorney fees.
July 29, 2011	The City and TDA entered into a settlement agreement in which TDA agreed to a dismissal of its claims and the City agreed not to pursue attorney fees.
August 1, 2011	The Council passed Ordinance 123667, authorizing the secondary defender contract with NDA, and providing that NDA would administer assigned counsel cases in which both ACA and NDA have conflicts.
November 15, 2011	After CBO issued a revised request for proposals (RFP) for a third provider, and convened a review panel to review responses, the Mayor submitted proposed legislation (introduced as C.B. 117344) to authorize the third defender contract with TDA.

Summary of C.B. 117344

C.B. 117344 would authorize the City Budget Director to execute a contract with TDA as the third public defender agency for a term through June 30, 2014. TDA would represent defendants in cases in which both the primary defender agency (ACA) and the secondary defender agency (NDA) have conflicts, and other cases as assigned.

The “other cases” are anticipated to be those in which TDA is already representing a particular defendant (because ACA and NDA had conflicts), and then another charge is filed against that defendant. Although ACA and/or NDA might not have a conflict for that new charge against that defendant, it would be better for the defendant to have a single attorney representing him or her on both matters. So the case arising from the new charge would also be assigned to TDA.

The City would guarantee funding to TDA equal to 1.0 FTE attorney (estimated at \$184,000 in 2012).

As is the City’s practice, the City Attorney’s Office (as the prosecutor in Municipal Court) is not involved in the selection of defender agencies. Foster Pepper has advised City staff on issues related to public defense contracting, and reviewed the proposed legislation before it was submitted to the Council.

cc: Linda Taylor-Manning, CBO
Catherine Cornwall, CBO